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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services	)	CC Docket No. 92-115

To: The Commission

COMMENTS AND/OR PETITION FOR FURTHER RULEMAKING OF AMERITECH MOBILE SERVICES, INC.

Ameritech Mobile Services, Inc. (Ameritech) hereby submits its comments in the above-captioned proceeding, in response to the Commission's Further Notice of Proposed Rulemaking ("Further Notice"), Mimeo No. FCC 94-102, released May 20, 1994. As discussed below, Ameritech recommends that the Commission adopt in this proceeding, or in a new proceeding, a mechanism that will allow 931 MHz licensees to take advantage of the Commission's "pre-grant construction" policy, even if the 931 MHz facility is above Line A; and a mechanism that will allow a licensee to establish on a permissive basis a transmitter designed to fill in "holes" in the system coverage, where a new service area will be covered, so long as no competing applicants would be deprived of an opportunity to apply for the unserved area. These proposals have been discussed with the staff of the Commission's Mobile Services Division, which recommended that the issues be raised in this proceeding. Ameritech also urges the Commission to maintain a 60 day cut off period for 931 MHz paging applications, rather than the proposed 30 day period. Ameritech further urges the Commission to adopt a more reasonable definition of "modification

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applications," to provide that a relocation of a facility will not be considered an "initial license" application if the new site is less than 16 miles (26 kilometers) from the authorized location, since this distance approximates a 50% overlap between the assumed service contour of 20 miles in all directions. Each of these recommendations is discussed in greater detail below.

I. THE SECTION 22.117(b) "FILL-IN" TRANSMITTER RULE SHOULD RECOGNIZE THE REALITIES OF 931 MHZ LICENSING.

Rule Section 22.117(b)(1)(ii) currently provides that an additional 931 MHz transmitter can be implemented without prior FCC approval, by filing a FCC Form 489 notification of construction, so long as the licensee certifies "that the proposed service and interference area(s) are totally encompassed by existing co-channel service and interference area(s)." This rule should be expanded to clarify that 931 MHz transmitters can be implemented on a permissive basis, so long as no other potential co-channel applicant is deprived of an opportunity to file an application.

Licensees often find that their coverage priorities lead to systems which include a ring of transmitters that create a "doughnut" of overlapping service contours, with a "hole" in the middle. This hole can be a radius of a few miles, or several miles. Because a facility covering the "hole" would not be totally encompassed within both the composite service contour and composite interference contour, licensees are currently required to file a Form 401 application (and await a grant five to seven

months later), before the fill-in facility can be implemented. For bands below 931 MHz, there is some arguable justification for this requirement, because potential co-channel applicants can increase or decrease their proposed reliable service area and interference contours as necessary to apply for a facility in the "hole," without causing harmful interference to the existing licensee. If not for the Form 401 requirement, these applicants may be deprived of an opportunity to file for the unserved area.[1]

On the other hand, 931 MHz facilities are subject to a co-channel separation of 70 miles from the transmitter site. See Rule Section 22.501(g)(3)(i). Therefore, unless the unserved area in the doughnut situation is so large that a competing applicant could provide the required 70 mile separation to all of the existing licensee's co-channel facilities, the unserved area is not a filing opportunity for the competing applicant. Under such circumstances, the public interest would clearly be served by allowing the existing licensee to fill in the hole in the doughnut on a permissive basis, thereby avoiding a substantial delay in improved coverage to the system's public subscribers.

Accordingly, the Commission should amend Rule Section 22.117(b) to allow the establishment of a 931 MHz fill-in

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[1] Of course, if the competing applicant must reduce its proposed reliable service area contour so drastically that the station would serve no appreciable service area, there is a strong argument that such applications would not serve the public interest, and the "doughnut" licensee should be able to establish a fill-in transmitter to serve this area on a notification basis. However, since the Further Notice deals only with 931 MHz paging, the rule for other bands can be reexamined at the appropriate time.

transmitter upon a showing (or certification) that the proposed facility will not deprive any other entity of an opportunity to apply for co-channel facilities that would meet the Commission's required 70 mile separation.[2] This standard would be consistent with the Commission's intent to implement more flexible and streamlined licensing procedures, and thereby facilitate better service to the public. See Further Notice at para. 4.

II. PRE-GRANT CONSTRUCTION OF 931 MHZ ABOVE LINE A

Rule Section 22.43(d) was adopted on May 17, 1989, in order to allow applicants to construct their Public Land Mobile Service facilities prior to the grant of their application, provided certain conditions are met. One of these conditions is the lapse of 90 days following the public notice accepting the application for filing. Another condition is that the proposed facility be located on the United States side of "Line A," as defined by Rule Section 1.955.

At the time this rule was adopted, the Line A requirement was consistent with the fact that all Public Land Mobile Service applications, including 931 MHz paging proposals, had to be coordinated by the Canadian Department of Communications (DOC). However, on November 13, 1992, the Commission's Common Carrier Bureau released an Order (Mimeo No. DA 92-1507), revising its

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[2] By defining this rule change in terms of the competing applicants' opportunity to file, the Commission would also allow incumbent licensees to fill in "harbors" or indentations on the outer edge of their composite contour.

rules to allow the implementation of permissive relocations and additional transmitters above Line A without prior Commission approval. The basis for this rule change was the adoption by the United States and Canada of an informal protocol, dividing the 931 MHz band frequencies between the two countries for use above Line A. As a result of this arrangement, the Commission will assign American licensees operating above Line A different 931 MHz frequencies than those available for assignment by the DOC across the border. Therefore, it is no longer necessary for 931 MHz proposals to be coordinated by the DOC.

This agreement has significantly decreased processing delays for 931 MHz proposals above Line A, and has made possible the prompt implementation of permissive relocations and fill-in transmitters that are wholly contained within an existing composite reliable service area contour. However, the November 13, 1992 Order did not focus upon the impact of this agreement on the prohibition against pre-grant construction above Line A. Because there is no longer a danger of harmful interference to co-channel licensees in Canada, it does not make sense to prevent 931 MHz applicants above Line A from taking advantage of the pre-grant construction mechanism. Given the colder climates above Line A, the ability to construct prior to grant is even more vital, because severe winter weather may delay the implementation of facilities for several months.

III. THE CUT OFF PERIOD SHOULD BE EXTENDED TO 60 DAYS

The Further Notice (at para. 16) proposes a 30 day "cut off" period for 931 MHz paging applications which are mutually exclusive. It is respectfully submitted that this period should be extended to 60 days, which is the existing cut off period embodied in Rule Section 22.31. Licensees who obtain the Commission's Public Notices by mail may not become aware of the filing of an application in their area of interest until several days have passed from the issuance of the Public Notice. 30 days may not allow sufficient time to review the Public Notice; assess the impact of one or more filings on your co-channel system; locate one or more suitable antenna sites for competing proposals and obtain reasonable assurance of site availability; prepare the engineering and legal portions of competing applications; microfiche these applications as required by the Commission's rules; and forward the applications to the Commission's lockbox.

In addition to these requirements, it is often desirable to contact the co-channel applicant to determine whether an intercarrier agreement can be reached that will render competing proposals unnecessary, a process which takes even more time. For these reasons, and for the benefit of administrative simplicity, the Commission should apply the same 60 day cut off period to 931 MHz paging applications as it applies to other frequency bands.

IV. THE DEFINITION OF MODIFICATION APPLICATION SHOULD USE A 50% OVERLAP TEST

The Commission proposes (at paragraph 18) to classify a proposal to relocate an authorized 931 MHz facility as an application for an initial license, if the new location is more than two kilometers (1.6 miles) from the existing station. It is respectfully submitted that this standard is unduly restrictive for relocation of authorized facilities, and would not serve the public interest. Applicants often find that, by the time their application has been granted, the antenna site is no longer available because, e.g., the tower has become too crowded, or another user has established an operation which would cause intermodulation interference. Under these circumstances, the licensee must find a new site, and it is not always possible to locate a suitable antenna structure within two kilometers. Zoning restrictions, United States Forest Service regulations, terrain considerations (such as the presence of lakes, swamps, or other obstructions), or a sheer lack of alternative structures may prevent such a short relocation.

However, licensees are generally able to accomplish their coverage needs from sites which are several miles away from the original antenna structure. Under the Commission's proposed rule, an existing licensee who is forced to abandon a site may find that it is thrown into an auction for a new site more than two kilometers away. If this auction is lost, the licensee may find a hole in its coverage, despite having been diligent in applying more than a year previous, to serve this area. If the

interloping auction winner can successfully establish a facility in the middle of a regional 931 MHz system, a valuable wide-area paging service will have been disrupted. Indeed, this opportunity may encourage competitors to abuse the system, by intentionally filing mutually exclusive applications designed more to disrupt a competing licensee than to provide service to the public.

Accordingly, the Commission should revise its proposed rule, to classify a relocation application as one which overlaps the authorized reliable service area contour by at least 50%. Because 931 MHz paging facilities have an assumed service area radius of 20 miles, any relocation of 16 miles (or 26 kilometers) or less would meet this 50% overlap requirement.[3]

A 50% overlap requirement would be more consistent with the realities of site availability discussed above. Moreover, the Commission has already used the 50% overlap rule as a measure of whether an applicant proposes a new service area, rather than an additional channel for an already existing service area. See Rule Section 22.16(b)(2) ("Applications are considered to be requesting initial channels if less than 50% of the proposed reliable service area contour overlaps an existing contour"); see also Rule Section 22.16(e) (classifying an application as a "fill-in" modification rather than an initial license proposal,

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[3] The 50% overlap mark actually occurs at a distance of 16.3 miles, or 26.23 kilometers. See Attachment A hereto. The 16 mile/26 kilometer measure is thus conservative, and simpler to administer.

if there is at least 50% service contour overlap with another facility on the same frequency); see also Rule Section 22.525(f).[4]

Ameritech also opposes the Commission's proposed use of "first come, first served" licensing for mutually exclusive modification applications. An existing paging system grows based on the demands of its customers. Therefore, it is not always possible for a licensee to know far in advance exactly where its next transmitters must be established. Moreover, budgetary constraints and the Commission's construction requirements can prevent a licensee from implementing its entire planned coverage all at once. Therefore, a licensee must be given an opportunity to respond to competing co-channel applications which may forever deprive it of the opportunity to expand coverage to a particular area where its subscribers travel. The "first come, first served" approach prevents a licensee from responding to such competing applications.

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[4] Rule Section 22.525(f) uses the 50% overlap standard to determine whether a paging application below 931 MHz is to be considered amended by a subsequent paging proposal. For the 931 MHz band, Rule Section 22.525(e) provides that a 931 MHz paging application will be amended by a subsequent filing for a paging proposal less than 40 miles away. Ameritech can understand the undesirability of a 40 mile standard for the purpose of defining the term "modification application." Accordingly, the 50% overlap standard is the more appropriate measure. The Commission should clarify that, under whatever standard is eventually adopted, the competing applicant must protect the service area of the original authorization that is to be relocated.

CONCLUSION

In light of the foregoing, it is respectfully submitted that the Commission modify its proposed rule changes as specified above. It is also requested that the Commission adopt the suggested changes to its 931 MHz fill-in transmitter and pre-grant construction policies described herein. These proposals have been discussed with the staff of the Commission's Mobile Services Division, which recommended that the issues be raised in this proceeding. However, in the event that the Commission considers the latter two proposals to be beyond the scope of this proceeding, it is requested that the Commission consider this portion of Ameritech's comments to be a request for further rulemaking, and promptly implement a proceeding that will adopt these rules.

Respectfully submitted,

AMERITECH MOBILE SERVICES, INC.

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SEAN A. AUSTIN CONSULTING ENGINEER (202) 828-5523

I, Sean A. Austin have been conferred a Bachelor of Engineering in Electrical Engineering (BEEE) from the City University of New York, The City College School of Engineering and have been retained by Ameritech to perform the attached area calculation. I'm directly responsible for the preparation of all technical information contained in this engineering statement.

I have been asked to calculate the maximum distance in which one could move two overlapping 20 mile radius service areas (circles) and still maintain an overlapping coverage of at least 50% or greater. In order to determine the maximum distance that the two origins could be seperated and still meet our criteria, I used two scaled circular models separated at various distances (d). Area measurements were made using a Kueffel & Esser Co. Perlimeter, and then the overlapping coverage area ratio was calculated for each distance. The results showed that the maximum distance that we could move the overlapping circle and still have at least a 50% overlapping coverage area was ~16.3 miles (26.23 km) .

Sean A. Austin
Director of Engineering
Blooston, Mordkofsky, Jackson & Dickens

Date: 6/30/94